

**U.S. District Court – District of Colorado
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:23–cv–00867–JLK**

Biomedical Device Consultants & Laboratories of Colorado, LLC v.
Vivitro Labs, Inc.

Assigned to: Judge John L. Kane
Cause: 35:271 Patent Infringement

Date Filed: 04/07/2023
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

**Biomedical Device Consultants &
Laboratories of Colorado, LLC**

represented by **Maral Shoaie**
Dorsey & Whitney LLP
1400 Wewatta Street
Suite 400
Denver, CO 80202–5549
303–352–1146
Email: shoaie.maral@dorsey.com
ATTORNEY TO BE NOTICED

Shannon L. Bjorklund
Dorsey & Whitney LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402–1498
612–492–6636
Email: bjorklund.shannon@dorsey.com
ATTORNEY TO BE NOTICED

Gregory Scot Tamkin
Dorsey & Whitney LLP
1400 Wewatta Street
Suite 400
Denver, CO 80202–5549
303–629–3400
Fax: 303–629–3450
Email: tamkin.greg@dorsey.com
ATTORNEY TO BE NOTICED

V.

Defendant

Vivitro Labs, Inc.

represented by **Carolyn J. Fairless**
Wheeler Trigg O'Donnell LLP
370 17th Street
Suite 4500
Denver, CO 80202–5647
303–244–1800
Fax: 303–244–1879
Email: fairless@wtotrial.com
ATTORNEY TO BE NOTICED

Jacob A. Rey

Wheeler Trigg O'Donnell LLP
 370 17th Street
 Suite 4500
 Denver, CO 80202-5647
 303-244-1877
 Fax: 303-244-1879
 Email: rey@wtotrial.com
ATTORNEY TO BE NOTICED

John W. Harbin

Meunier Carlin & Curfman LLC
 999 Peachtree Street NE
 Suite 1300
 Atlanta, GA 30309
 404-645-7700
 Fax: 404-645-7707
 Email: jharbin@mcciplaw.com
ATTORNEY TO BE NOTICED

Warren J. Thomas

Meunier Carlin & Curfman LLC
 999 Peachtree Street NE
 Suite 1300
 Atlanta, GA 30309
 404-645-7700
 Email: wthomas@mcciplaw.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/07/2023	<u>1</u>	COMPLAINT <i>and Jury Demand</i> against VIVITRO LABS, INC. (Filing fee \$ 402, Receipt Number ACODC-9035685) Attorney Gregory Scot Tamkin added to party BIOMEDICAL DEVICE CONSULTANTS & LABORATORIES OF COLORADO, LLC(pty:pla), filed by BIOMEDICAL DEVICE CONSULTANTS & LABORATORIES OF COLORADO, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Civil Cover Sheet, # <u>6</u> Summons, # <u>7</u> PLAINTIFFS CORPORATE DISCLOSURE STATEMENT)(Tamkin, Gregory) (Entered: 04/07/2023)
04/07/2023	<u>2</u>	Case assigned to Magistrate Judge S. Kato Crews. Text Only Entry (norlin,) (Entered: 04/07/2023)
04/07/2023	<u>3</u>	SUMMONS issued by Clerk. (Attachments: # <u>1</u> Magistrate Judge Consent Form) (norlin,) (Entered: 04/07/2023)
04/07/2023	<u>4</u>	Administrative Notice: Notice to filer of non-compliance with Patent, Trademark, or Copyright Action case opening procedures. It is the responsibility of the attorney or pro se party commencing the action to follow Local Rule D.C.COLO.LCivR 3.1. Please file a properly completed Report form, which can be found on the courts website. (norlin,) (Entered: 04/07/2023)
04/10/2023	<u>5</u>	NOTICE of Entry of Appearance by Maral Shoaie on behalf of Biomedical Device Consultants & Laboratories of Colorado, LLC Attorney Maral Shoaie added to party Biomedical Device Consultants & Laboratories of Colorado, LLC(pty:pla) (Shoaie, Maral) (Entered: 04/10/2023)
04/10/2023	<u>6</u>	NOTICE re 4 Administrative Notice, <i>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</i> by Plaintiff Biomedical Device Consultants

		& Laboratories of Colorado, LLC (Shoaei, Maral) (Entered: 04/10/2023)
04/10/2023	<u>7</u>	NOTICE of Entry of Appearance by Shannon L. Bjorklund on behalf of Biomedical Device Consultants & Laboratories of Colorado, LLC Attorney Shannon L. Bjorklund added to party Biomedical Device Consultants & Laboratories of Colorado, LLC(pty:pla) (Bjorklund, Shannon) (Entered: 04/10/2023)
04/12/2023	<u>8</u>	MOTION for Preliminary Injunction by Plaintiff Biomedical Device Consultants & Laboratories of Colorado, LLC. (Attachments: # <u>1</u> Decaration of Craig Weinberg in Support of Motion for Preliminary Injunction, # <u>2</u> Decaration of Michael Girard in Support of Motion for Preliminary Injunction)(Tamkin, Gregory) (Entered: 04/12/2023)
04/13/2023	<u>9</u>	CASE REASSIGNED pursuant to D.C.COLO.LCivR 40.1(c)(2)(a) re <u>8</u> MOTION for Preliminary Injunction. This case is randomly reassigned to Chief Judge Philip A. Brimmer. All future pleadings should be designated as 23-cv-00867-PAB. (Text Only Entry) (csarr,) (Entered: 04/13/2023)
04/13/2023	<u>10</u>	ORDER TRANSFERRING CASE by Chief Judge Philip A. Brimmer on 4/13/2023. ORDERED that, pursuant to D.C.COLO.LCivR 40.1(a), this case is transferred to Senior Judge John L. Kane. All future pleadings should be designated as 23-cv-00867-JLK . (jtorr,) (Entered: 04/13/2023)
04/19/2023	<u>11</u>	ORDER Setting Preliminary Injunction Hearing and Briefing Schedule. A hearing on Plaintiff's Motion for Preliminary Injunction is set for June 6, 2023, and June 7, 2023, beginning at 9:30 a.m. on both days. The parties are DIRECTED to file their Witness and Exhibit Lists for the hearing on or before June 1, 2023. The parties should review my Pretrial and Trial Procedures Memorandum Civil, available on the court's website at http://www.cod.uscourts.gov/JudicialOfficers/SeniorArticleIIIJudges/HonJohnLKane.aspx . Counsel are expected to attend the hearing in person. The parties should note on their Witness Lists whether it is anticipated any witness will testify via video conferencing. Plaintiff's counsel is DIRECTED to provide Defendant with a copy of this Order. ORDERED by Judge John L. Kane on 4/19/2023. (angar,) (Entered: 04/19/2023)
04/20/2023	<u>12</u>	NOTICE of Entry of Appearance <i>for Defendant</i> by Warren J. Thomas on behalf of Vivitro Labs, Inc. Attorney Warren J. Thomas added to party Vivitro Labs, Inc.(pty:dft) (Thomas, Warren) (Entered: 04/20/2023)
04/27/2023	<u>13</u>	NOTICE of Entry of Appearance by Carolyn J. Fairless on behalf of Vivitro Labs, Inc. Attorney Carolyn J. Fairless added to party Vivitro Labs, Inc.(pty:dft) (Fairless, Carolyn) (Entered: 04/27/2023)
04/27/2023	<u>14</u>	NOTICE of Entry of Appearance by Jacob A. Rey on behalf of Vivitro Labs, Inc. Attorney Jacob A. Rey added to party Vivitro Labs, Inc.(pty:dft) (Rey, Jacob) (Entered: 04/27/2023)
04/28/2023	<u>15</u>	MINUTE ORDER. Defendant ViVitro Labs, Inc. has notified the Court that it requires expedited resolution of a discovery dispute pertinent to the Motion for Preliminary Injunction filed by Plaintiff Biomedical Device Consultants & Laboratories of Colorado, LLC. Accordingly, Defendant is DIRECTED to file its related motion on or before Monday, May 1, 2023. Plaintiff is DIRECTED to file its Response to any motion filed by Defendant on or before Thursday, May 4, 2023. And any Reply is due Friday, May 5, 2023. Ordered by Judge John L. Kane on 4/28/2023. Text Only Entry (jlksec) (Entered: 04/28/2023)
05/01/2023	<u>16</u>	MOTION for Discovery <i>Limited and Expedited</i> by Defendant Vivitro Labs, Inc.. (Attachments: # <u>1</u> Proposed Order (PDF Only) Proposed Order)(Thomas, Warren) (Entered: 05/01/2023)
05/01/2023	<u>17</u>	Exhibits in Support of <u>16</u> MOTION for Discovery <i>Limited and Expedited Exhibits 1-4</i> by Defendant Vivitro Labs, Inc.. (Attachments: # <u>1</u> Exhibit Exhibit 2, # <u>2</u> Exhibit Exhibit 3, # <u>3</u> Exhibit Exhibit 4)(Thomas, Warren) (Entered: 05/01/2023)

05/04/2023	<u>18</u>	RESPONSE to <u>16</u> MOTION for Discovery <i>Limited and Expedited</i> filed by Plaintiff Biomedical Device Consultants & Laboratories of Colorado, LLC. (Tamkin, Gregory) (Entered: 05/04/2023)
05/05/2023	<u>19</u>	NOTICE of Entry of Appearance <i>for Defendant</i> by John W. Harbin on behalf of Vivitro Labs, Inc. Attorney John W. Harbin added to party Vivitro Labs, Inc.(pty:dft) (Harbin, John) (Entered: 05/05/2023)
05/05/2023	<u>20</u>	MOTION to Dismiss for Lack of Jurisdiction by Defendant Vivitro Labs, Inc.. (Attachments: # <u>1</u> Exhibit 1 – Mouneimne Declaration, # <u>2</u> Proposed Order (PDF Only))(Thomas, Warren) (Entered: 05/05/2023)
05/05/2023	<u>21</u>	CORPORATE DISCLOSURE STATEMENT identifying Corporate Parent Starfish Holdings Inc., of Canada. for Vivitro Labs, Inc.. (Thomas, Warren) (Entered: 05/05/2023)
05/05/2023	<u>22</u>	REPLY to Response to <u>16</u> MOTION for Discovery <i>Limited and Expedited</i> filed by Defendant Vivitro Labs, Inc.. (Thomas, Warren) (Entered: 05/05/2023)
05/09/2023	<u>23</u>	ORDER GRANTING DEFENDANT'S MOTION FOR LIMITED EXPEDITED DISCOVERY (ECF NO. <u>16</u>). BDC is DIRECTED to produce the settlement agreement in question on or before Friday, May 12, 2023. The agreement may be produced with the designation "outside attorney' eyes only" and shall be used only for the purpose of this litigation and not for any business or other purpose whatsoever. Any pleadings or briefs quoting or discussing the specific terms of the agreement may be maintained as restricted filings in this action upon motion seeking to restrict the documents in accordance with the requirements of D.C.COLO.LCivR 7.2. ORDERED by Judge John L. Kane on 5/9/2023.(angar,) (Entered: 05/09/2023)
05/16/2023	<u>24</u>	RESTRICTED DOCUMENT – Level 1 – Defendant Vivitro's Opposition To BDC's Motion For Preliminary Injunction [ECF NO. <u>8</u>] : by Defendant Vivitro Labs, Inc.(Attachments: # <u>1</u> Exhibit 1 – Mouneimne Declaration, # <u>2</u> Exhibit 2 – Dasi Declaration, # <u>3</u> Exhibit 3 – Xi et al. Patent, # <u>4</u> Exhibit 4 – Lu et al. 2003, # <u>5</u> Exhibit 5 – Dynatek M6 Manual, # <u>6</u> Exhibit 6 – Sponseller et al. Patent, # <u>7</u> Exhibit 7 – Patent Owner Preliminary Response, # <u>8</u> Exhibit 8 – VIVITRO_000001 – 04, # <u>9</u> Exhibit 9 – Settlement Agreement, # <u>10</u> Exhibit 10 – June 17 2015 Office Action, # <u>11</u> Exhibit 11 – Rousseau et al. 1984, # <u>12</u> Exhibit 12 – Dasi CV, # <u>13</u> Exhibit 13 – BDC Labs Test Equipment)(Thomas, Warren) Modified on 5/17/2023 to add title (angar,). (Entered: 05/16/2023)
05/19/2023	<u>25</u>	RESPONSE to <u>20</u> MOTION to Dismiss for Lack of Jurisdiction filed by Plaintiff Biomedical Device Consultants & Laboratories of Colorado, LLC. (Tamkin, Gregory) (Entered: 05/19/2023)
05/23/2023	<u>26</u>	RESTRICTED DOCUMENT – Level 1 – Reply in Support of Motion for Preliminary Injunction : by Plaintiff Biomedical Device Consultants & Laboratories of Colorado, LLC.. (Attachments: # <u>1</u> Supp Declaration of Michael Girard in Support of Motion for Preliminary Injunction)(Tamkin, Gregory) Modified on 5/24/2023 to add title (angar,). (Entered: 05/23/2023)
05/24/2023	<u>27</u>	REPLY to Response to <u>20</u> MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Vivitro Labs, Inc.. (Thomas, Warren) (Entered: 05/24/2023)
05/29/2023	<u>28</u>	ORDER granting in part <u>20</u> ViVitro's Motion to Dismiss for Lack of Personal Jurisdiction. I find that this Court lacks personal jurisdiction over ViVitro. Considering the interests of justice and my determination that ViVitro would have been subject to personal jurisdiction in California when this case was filed, transfer of this case to the United States District Court for the Central District of California is warranted. The Clerk of the Court is DIRECTED to transfer this case to that court. The June 6 and June 7, 2023, hearing dates in this matter are VACATED. Ordered by Judge John L. Kane on 5/29/2023. Text Only Entry(jlksec) (Entered: 05/29/2023)